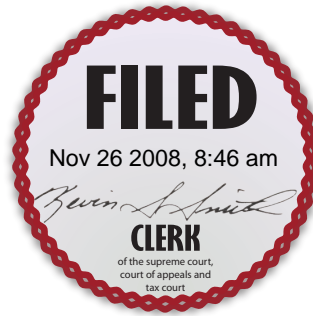


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

KIRK ISOM,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 41A04-0806-PC-370

APPEAL FROM THE JOHNSON SUPERIOR COURT
The Honorable Cynthia S. Emkes, Judge
Cause No. 41D02-0804-PC-1

November 26, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Petitioner Kirk Isom appeals the denial of his petition for post-conviction relief. We affirm.

Facts and Procedural History

The sparse record discloses that Isom pled guilty, pursuant to a plea agreement, to Operating While Intoxicated with a Prior Conviction, as a Class D felony,¹ and admitted to being a Habitual Substance Offender.² The remaining four charges were “merged” into the operating charge. On June 11, 2007, the trial court accepted the guilty plea and plea agreement and entered the judgment of conviction. In the Presentence Report that is included in the appellant’s appendix, the name “Joseph Sauer” is listed as an alias as well as an alternate social security number and date of birth. Appendix at 8. As the record does not contain the sentencing transcript, the sentencing order, or the CCS entries regarding sentencing, we can only deduce that Isom was sentenced to a certain period of imprisonment.

According to the order thereon, on April 7, 2008, Isom filed a petition for post-conviction relief, alleging an erroneous sentence and prosecutorial misconduct. The essence of his complaint was that the trial court used a conviction to support the habitual allegation that was not his, yet the conviction was listed in his Presentence Report. The post-conviction court summarily denied the petition due to its conclusion that there were no factual allegations supporting Isom’s claims.

Isom now appeals.

¹ Ind. Code § 9-30-5-3.

Discussion and Decision

Post-conviction procedures do not afford defendants the opportunity for a “super-appeal.” Benefiel v. State, 716 N.E.2d 906, 911 (Ind. 1999). Rather, these actions are “special, quasi-civil remedies whereby a party can present an error which, for various reasons, was not available or known at the time of the original trial or appeal.” Berry v. State, 483 N.E.2d 1369, 1373 (Ind. 1985). The petitioner must establish the grounds for post-conviction relief by a preponderance of the evidence. Weatherford v. State, 619 N.E.2d 915, 917 (Ind. 1993). To prevail on appeal, the petitioner must demonstrate that the evidence as a whole “leads unerringly and unmistakably to a decision opposite that reached by the trial court.” Prowell v. State, 741 N.E.2d 704, 708 (Ind. 2001). We will disturb the decision of a post-conviction court only where the evidence is uncontradicted and leads to but one conclusion, and the post-conviction court has reached the opposite conclusion. Miller v. State, 702 N.E.2d 1053, 1058 (Ind. 1998).

Pro se litigants “are held to the same standard as trained counsel and are required to follow procedural rules.” Evans v. State, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), trans. denied. An appellant must present arguments on appeal that are supported by cogent reasoning and citations to proper authorities, statutes, and relevant portions of the Record on Appeal. Ind. Appellate Rule 46(A)(8)(a). Failure to meet this requirement results in the waiver of that issue. Nur v. State, 869 N.E.2d 472, 482 (Ind. Ct. App. 2007), reh’g denied, trans. denied.

² Ind. Code § 35-50-2-10.

Here, Isom has failed to include the charging information, the plea agreement, the transcript from his guilty plea or sentencing hearing, the sentencing order, his petition for post-conviction relief, and the State's response to his petition. Furthermore, Isom's arguments do not address the post-conviction court's finding that Isom "admitted to said conviction and alias under which it was committed." Appendix at 21. Rather, he makes a general assertion that the trial court used another person's conviction to support his habitual substance offender allegation.

Isom has failed to meet the burden of presenting evidence supporting his arguments for relief. Isom only presents general arguments labeled as issues of violation of due process and prosecutorial misconduct. Furthermore, he fails to provide a full record that should include the plea agreement, the transcripts of the guilty plea and sentencing hearings, the sentencing order, and his petition for post-conviction relief. When appealing a denial of a petition for post-conviction relief, the petitioner has the burden to provide an adequate record for review. Lile v. State, 671 N.E.2d 1190, 1193 (Ind. Ct. App. 1996). Without a proper record and citations to authorities, statutes and the record that support each contention, our review is frustrated and leaves us with no choice but to find waiver of the issues presented.

Waiver notwithstanding, we opine that if the post-conviction court's finding that Isom admitted to the past convictions and the use of the Joseph Sauer alias during either his guilty plea or sentencing hearing, Isom could not demonstrate a violation of due process or prosecutorial misconduct. Isom does not allege that his guilty plea was not voluntary; leaving us to assume that he also does not argue that his admission to the current and past

crimes was not voluntary. Therefore, if there had been an error, Isom had the opportunity to correct it during the relevant hearing.

Affirmed.

RILEY, J., and BRADFORD, J., concur.